(2013) 04 AHC CK 0112

In the Allahabad High Court

Case No : Central Excise Appeal No. 50 of 2013

Mirzapur Electrical Industries Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35, 37C, 37C(1b)
Limitation Act, 1963 — Section 5

Citation : (2014) 300 ELT 496 : (2013) 20 GSTR 108 : (2013) 40 STT 282

Hon'ble Judges : Sunil Ambwani, J;Bharat Bhushan, J

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; Vinod Kant Srivastava, Senior Standing Counsel, Indirect-tax Department (Customs, Central Excise and Service Tax), for the Respondent

Judgement

1. Heard Shri A.P. Mathur for the appellant. Shri Vinod Kant Srivastava, senior standing counsel, Indirect-tax Department, (Customs, Central Excise and Service Tax), Government of India appears for the respondent. This Central excise appeal arises out of a final order dated September 3, 2012 issued on September 17, 2012 passed by the Member-Judicial, Customs, Excise and Service Tax Appellate Tribunal (CESTAT) by which he has rejected Excise Appeals Nos. 2806 and 2807 of 2010-SM arising out of Order-in-Appeals Nos. 72 and 73, dated June 10, 2009 passed by the Commissioner of Central Excise (Appeals), Allahabad.

2. The CESTAT rejected the appeal as barred by limitation.

3. The Commissioner (Appeals) had also rejected the appeal as barred by time. The order-in-original was passed on September 28, 2007. A copy of the order was sent to the appellant under registered cover. It was submitted before the Commissioner (Appeals) that the order was not served upon the appellant. The Revenue resorted to the provisions of section 37C(1b) of the Central Excise Act (in short, "the Act") by pasting the order on the factory gate on December 5, 2007. The appellant stated before the Commissioner (Appeals) that he came to

know about the said order on or around December 26, 2007 and addressed a letter on the same day on December 26, 2007 for supplying of certified copy of the order. The appeal was thereafter filed on September 10, 2008. It was held to be barred by limitation.

4. It was contended before the CESTAT, that the order-in-original was not sent by registered post. It was sent only by speed post, which is not the method prescribed in law of serving the decision in terms of section 37C of the Act. The order was received back undelivered with the remarks "no firm in the same name exists, hence returned". The service, it was alleged in such circumstances, could not be held to be sufficient in terms of the provisions of section 37C of the Act.

5. The CESTAT has found that the service should first be u/s 37C made by registered post. The pasting of orders comes as a second consequence and should be resorted to after exhausting the manner of service as appearing against sub-clause (a). The Revenue had first sent Order-in-Original No. 11/2007, dated September 28, 2007 through speed post. When the said envelop returned back with the remarks that "no firm in the said name exists", it was pasted on the factory gate. The appellant admittedly came to know about the order on December 26, 2007. Instead of applying for a certified copy of the order, he just sent a letter on the same day complaining that the order has not been received without giving the new address for communication.

6. The CESTAT found that the legal obligation of the Revenue was complete in terms of section 37C of the Act. Once it is admitted that the appellant came to know about the pasting of the order on December 26, 2007, the appeal should have been filed in time. The appellant had not made any averment to show that only first page of the order was pasted. Apart from it the appellant having addressed a letter in December, 2007, for supply of copy of the order did not make any effort to procure a copy immediately. The appellant was aware that the appeal had to be filed within 60 days and that the delay of only 30 days thereafter could be condoned. The appeal was filed about eight to nine months after the expiry of the period of limitation.

7. Shri A.P. Mathur submits that the order-in-original was never served on the appellant. A notice was pasted on the factory gate, which was not the order. The appellant applied for the order on the same day on December 26, 2007 but the same was not given to it. He submits that the appeal may be heard on the question, "as to whether the pasting of one page of the adjudication order at the factory gate is a valid service u/s 37C of the Act", and further "as to whether the CESTAT was justified in ignoring the fact that the appellant had requested to supply a certified copy of the order on the same day when it came to know about the pasting of the order at the factory gate".

8. We do not find any merit in the grounds urged by the learned counsel for the appellant.

9. Section 37C of the Act provides for the method of service of the order. The

registered post and speed post are the same method of service, of which the record is kept by the post office. The object of sending the post by registered post is to keep a record, which is also served by sending an article by speed post through the same agency. Since the appellant had not given the forwarding addressing for communication, the envelop was returned back undelivered with the remark that no firm in the said name exists. In the circumstances, the Revenue made an attempt to serve the appellant by substituted service. It is not denied that the order was pasted on the factory gate and that the appellant came to know about it on December 26, 2007. The appellant satisfied himself by sending a letter to the Department to provide a copy of the order. He did not make any efforts to obtain a certified copy of the order, to file the appeal within limitation which in such case has to be counted from December 26, 2007.

10. The question of condonation of delay beyond 30 days after the limitation expires, was considered in Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others, . The Supreme Court held that the provisions of section 35 override the provisions of section 5 of the Limitation Act and that whether there is any sufficient cause for condonation of delay which means adequate or enough is essentially a question of fact.

11. The CESTAT has not committed any error of law in finding that the appeal was barred by limitation, and thus no substantial question of law arises for consideration of the court. The Central excise appeal is dismissed in limine.